

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

HERMAN OVERPECK, et al.,

Plaintiffs,

v.

FEDEX CORPORATION, et al.,

Defendants.

Case No. 18-cv-07553-PJH

**ORDER DENYING MOTION FOR
LEAVE TO FILE MOTION FOR
RECONSIDERATION; DISMISSING
ISPs; TERMINATING MOTION TO
DISMISS; AND DENYING MOTIONS
TO SEAL**

In the above-captioned case, defendants FedEx Corp. and FedEx Ground (collectively, “FedEx”) have filed a motion for leave to file a motion for reconsideration of the court’s February 5, 2021 order dismissing Bondz, Inc.

In the February 5 order, the court concluded that the ISPs¹ were not properly joined to the case under Federal Rule of Civil Procedure 19. First, the court concluded that it could accord complete relief between plaintiffs and FedEx even in the absence of the ISPs, thus making joinder improper under Rule 19(a)(1)(A). Second, the court considered joinder under Rule 19(a)(1)(B), which applies to parties who “claim[] an interest relating to the subject matter of the action.” Because Bondz, as the moving party, had disclaimed any such interest, the court concluded that Bondz could not be joined under either Rule 19(a)(1)(A) or 19(a)(1)(B), and dismissed Bondz from the case.

FedEx initially sought leave to file a motion for reconsideration under both Civil Local Rule 7-9(b)(2) and 7-9(b)(3). See Dkt. 268-5. The court denied FedEx’s motion to

¹ “Independent service providers,” as defined in the complaint.

1 the extent it was based on L.R. 7-9(b)(3), as it violated L.R. 7-9(c)'s prohibition against
 2 repetition of argument. See Dkt. 262 at 1-2. The court then gave plaintiffs and the ISPs
 3 an opportunity to file a response to FedEx's motion. Plaintiffs and one ISP (MRD
 4 Transports, Inc.) have filed such responses.

5 Civil Local Rule 7-9(b)(2) requires the party seeking reconsideration of a court
 6 order to show "reasonable diligence" in bringing its motion, and "the emergence of new
 7 material facts or a change of law occurring after the time of such order."

8 FedEx argues that "after briefing was completed on Bondz's motion, new material
 9 facts emerged that were unavailable to the court when it entered the order." Dkt. 268-5
 10 at 7. Specifically, FedEx points to "deposition testimony of the chief executive officer of
 11 Bondz and the corporate representatives" of other ISPs. Id.

12 FedEx argues that the testimony "demonstrates that Bondz and other [ISPs] are
 13 necessary parties because this litigation threatens their ability to operate as independent
 14 businesses." Dkt. 268-5 at 7.

15 Specifically, FedEx identifies the following categories of testimony as new material
 16 facts warranting reconsideration: (1) "Bondz and related companies are sophisticated
 17 independent business entities," (2) "Bondz – not FedEx Ground – exercises control over
 18 its drivers and is fully responsible for its own pay practices," (3) "Bondz takes affirmative
 19 steps to maintain independence from FedEx Ground," (4) Bondz's CEO "stands to lose
 20 significant financial investments if his service provider agreements with FedEx Ground
 21 are terminated," and (5) "other [ISPs] have given similar testimony and provided similar
 22 evidence" that they are independent businesses, whose owners have made substantial
 23 investments, and who do not perceive themselves to be FedEx employees. Dkt. 268-5 at
 24 13-15.

25 Again, to establish that the ISPs should be joined to the suit under Rule
 26 19(a)(1)(A), the facts must show that, "in [the ISPs'] absence, the court cannot accord
 27 complete relief among existing parties."

28 As to category (1) of FedEx's cited evidence, the ISPs' status as "sophisticated

1 independent business entities” is not relevant to the Rule 19 analysis. Nor does it appear
2 to be a “new” fact that “emerged” after the court’s February 5 order. Category (1) does
3 not provide a basis for relief under Civil Local Rule 7-9(b)(2).

4 As to category (2), while the level of control exercised by the ISPs is certainly
5 relevant to this litigation, it is not material to this court’s joinder analysis under Rule 19.
6 As stated in the court’s prior order, plaintiffs seek no relief from the ISPs. Thus, the court
7 can “accord complete relief among existing parties” without the presence of the ISPs.
8 FedEx is entitled to use this category of evidence in defending itself against plaintiffs’
9 claims, but it does not follow that Bondz and the other ISPs must necessarily be joined to
10 this suit. Accordingly, category (2) does not provide a basis for relief under Civil Local
11 Rule 7-9(b)(2).

12 The court’s analysis of category (3) is similar to its analysis of category (2). To the
13 extent that Bondz and the other ISPs take steps to “maintain independence” from FedEx
14 – i.e., to regulate FedEx’s level of control – such evidence may be relevant to FedEx’s
15 defense, but it does not change the fact that plaintiffs seek no relief from the ISPs. As a
16 result, the court can “accord complete relief among existing parties” without the presence
17 of the ISPs. Category (3) does not provide a basis for relief under Civil Local Rule
18 7-9(b)(2).

19 As to category (4), FedEx argues that the Bondz CEO “stands to lose significant
20 financial investments if his service provider agreements with FedEx Ground are
21 terminated.” In making this argument, FedEx appears to imply some connection between
22 the court’s joinder ruling and FedEx’s own decision whether or not to terminate its service
23 agreements with the ISPs. The court fails to see any connection between the two.
24 Additionally, this does not appear to be “new” evidence that emerged after the court’s
25 ruling. Accordingly, category (4) does not provide a basis for relief under Civil Local Rule
26 7-9(b)(2).

27 Finally, as to category (5), FedEx argues that the testimony shows that the ISPs
28 are independent businesses, whose owners have made substantial investments, and

1 who do not perceive themselves to be FedEx employees. The court has already
2 addressed the issue of the ISPs' status as independent business entities in the context of
3 category (1). And the court has already addressed the issue of substantial investments
4 in the context of category (4).

5 As to the testimony that the ISPs "do not perceive themselves" to be FedEx
6 employees, this testimony is not material to the court's joinder analysis under Rule
7 19(a)(1)(A). Plaintiffs seek relief only from FedEx, and in doing so, they will be
8 presenting evidence that FedEx is their employer. And as stated before, FedEx is
9 entitled to present evidence that they are not plaintiffs' employer. None of this requires
10 the ISPs to be parties to the litigation. And as plaintiffs argue in their response, multiple
11 entities can be joint employers. Dkt. 274-5 at 8-9 (citing Martinez v. Combs, 49 Cal.4th
12 35, 59 (2010)).

13 Under Rule 19, complete relief can be accorded among existing parties even in
14 the absence of the ISPs, and the evidence cited by FedEx is not relevant to that
15 conclusion. Accordingly, category (5) does not provide a basis for relief under Civil Local
16 Rule 7-9(b)(2).

17 Because FedEx has not demonstrated "the emergence of new material facts or a
18 change of law occurring after the time" of the court's order dismissing Bondz, FedEx's
19 motion for leave to file a motion for reconsideration is DENIED.

20 Having determined that the court's February 5, 2021 order will not be
21 reconsidered, the court will now address the ISP declarations filed in response to that
22 order. Specifically, three ISPs have filed declarations stating that they do not claim any
23 interest in this litigation, and that dismissal would not impair or impede their ability to
24 protect their interests. See Dkt. 251 (declaration from Dane Logistics), Dkt. 252
25 (declaration from Turner Holdings), Dkt. 253 (declaration from MRD Transports).

26 The court has previously concluded that joinder of these parties would not be
27 proper under Rule 19(a)(1)(A). See Dkt. 250 at 2-3. Having considered their
28 declarations, the court now also finds that joinder of these parties would not be proper

under Rule 19(a)(1)(B), as they do not “claim[] an interest relating to the subject matter of the action” as required by the rule. See id. at 3 (citing United States v. Bowen, 172 F.3d 682, 689 (9th Cir. 1999)). Accordingly, Dane Logistics, Turner Holdings, and MRD Transports are DISMISSED from the action under Rule 21.²

Finally, three motions to seal are pending before the court: (1) FedEx’s motion to seal portions of its motion for leave to file a motion for reconsideration and related exhibits, (2) plaintiffs’ motion to seal portions of its opposition to FedEx’s motion for leave to file a motion for reconsideration and related exhibits, and (3) plaintiffs’ motion to seal portions of its opposition to FedEx’s administrative motion to amend the class certification briefing schedule and related exhibits.³ All three motions seek to seal deposition testimony from the CEO of Bondz, Michael Grodi.

“There is a general principle in favor of public access to federal court records. Nixon v. Warner Commc'ns, Inc., 435 U.S. 589, 597 (1978). “The proponent of sealing bears the burden with respect to sealing. A failure to meet that burden means that the default posture of public access prevails.” Kamakana v. City & City of Honolulu, 447 F.3d 1172, 1182 (9th Cir. 2006).

The Ninth Circuit has recognized that two different standards may apply when a request to seal a document is made in connection with a motion – namely the “compelling reasons” standard or the “good cause” standard. Ctr. For Auto Safety v. Chrysler Grp., LLC, 809 F.3d 1092, 1096-97 (9th Cir. 2016). The compelling reasons standard applies to any sealing request made in connection with a motion that is “more than tangentially related to the merits of a case.” Id. at 1101.

Bondz’s supporting declarations do not address whether the “good cause” or “compelling reasons” standard applies. In this case, the court will apply the “good cause”

² Because Dane Logistics is no longer a party to the case as a result of this dismissal, its motion to dismiss for lack of jurisdiction is terminated as moot. See Dkt. 227.

³ FedEx and plaintiffs originally filed motions to seal that did not comply with the local rules, and have since filed corrected motions. Accordingly, the incorrectly-filed motions are terminated. See Dkt. 254 (corrected version at Dkt. 268), Dkt. 260 (corrected version at Dkt. 263).

1 standard.

2 In its declarations, Bondz argues that the deposition excerpts have been
3 designated “highly confidential – attorneys’ eyes only” under the protective order in this
4 case. Dkt. 271, 272, 277. Bondz further argues that the excerpts are “highly confidential”
5 because they “contain commercially sensitive information” and “include proprietary
6 business information.” Id. Bondz further argues:

7 Such information includes: (a) the contract negotiation
8 process between FedEx Ground and Bondz, (b) Bondz
9 corporate structure and confidential aspects of business
10 transactions with non-party affiliates, (c) the hiring process at
11 Bondz, including the candidate selection and interview
process, (d) communications with Bondz drivers relating to
route assignments, and (e) Bondz’s policies and practices
regarding the discipline and termination of Bondz drivers.

12 Dkt. 271, ¶ 2; see also Dkt. 272, ¶ 2; Dkt. 277, ¶ 2.

13 As an initial matter, the court notes that simply being designated “highly
14 confidential” under a protective order does not automatically justify the sealing of
15 evidence.

16 The court further notes that many of the descriptions in the Bondz declaration are
17 boilerplate, conclusory phrases regarding the “confidential” and “proprietary” and
18 “sensitive” nature of the testimony. A sealing proponent must do more than offer bare
19 assertions that evidence is sensitive – it must provide a concrete reason for overcoming
20 the presumption in favor of public access.

21 To the extent that Bondz provides specific categories of information to be sealed,
22 the identification of those categories still does not provide support for sealing the cited
23 testimony. Many of these categories relate to the level of control exerted by Bondz in
24 relation to FedEx, which, as mentioned before, is one of the central issues in this case.
25 Evidence relating to that issue cannot be sealed. Moreover, the need to seal that
26 information is undermined by the fact that other ISPs – Bondz’s own competitors – have
27 already allowed similar information regarding their companies to be filed on the public
28 docket. See Dkt. 274-5 at 6-7.

IT IS SO ORDERED.

/s/ Phyllis J. Hamilton
PHYLLIS J. HAMILTON
United States District Judge